

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSHUA AHAMED,

Plaintiff,

MEMORANDUM & ORDER
19-CV-6388 (EK) (CLP)

-against-

563 MANHATTAN INC. d/b/a COTTER
BARBER, et al.

Defendants.

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ERIC KOMITEE, United States District Judge:

The Court has received Magistrate Judge Cheryl Pollak's Report and Recommendation ("R&R") dated July 6, 2023. ECF No. 130. Judge Pollak recommends that I hold non-party witness Boris Barton in contempt of court for his failure to comply with a court-ordered subpoena dated January 23, 2023, requiring him to appear for a deposition on February 7, 2023, and that I impose sanctions accordingly. R&R 14.¹ Judge Pollak certifies the facts relevant to Mr. Barton's non-compliance with the January 23, 2023 subpoena, pursuant to 28 U.S.C. § 636(e)(6)(B)(iii). See *id.* at 11-12. As Judge Pollak correctly observes, "[t]he district court, upon certification of the facts supporting a finding of contempt, is then required to

¹ Judge Pollak does not recommend that I hold Mr. Barton in contempt for failing to comply with a December 28, 2022 subpoena, directing him to appear at a then-scheduled January 17, 2023 deposition. *Id.*

conduct a de novo hearing at which issues of fact and credibility determinations are to be made" before adjudging a person in contempt. *Bowens v. Atl. Maint. Corp.*, 546 F. Supp. 2d 55, 71 (E.D.N.Y. 2008).

No party has filed objections, and the time to do so has expired. Accordingly, the Court reviews Judge Pollak's recommendations for clear error on the face of the record. See Fed. R. Civ. P. 72(b) advisory committee's note to 1983 addition; accord *State Farm Mut. Auto. Ins. Co. v. Grafman*, 968 F. Supp. 2d 480, 481 (E.D.N.Y. 2013).

Having reviewed the record, I find no clear error and therefore adopt the R&R to the extent that it recommends that I order Mr. Barton to show cause as to why he should not be found in contempt for failing to comply with the January 23, 2023 subpoena.

Accordingly, Boris Barton is ordered to appear in person before this Court on November 6, 2023, at 10:00 a.m. in Courtroom 6G North, United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, 11201. All parties are likewise directed to appear. On that date, Mr. Barton must show cause as to why he should not be held in contempt for failing to comply with the January 23, 2023 subpoena, as detailed in the R&R's certified facts section. Mr. Barton is advised that if he does not personally appear on November 6, 2023, the Court may impose

sanctions, including but not limited to an order of contempt, monetary fines, and/or an arrest warrant.

Plaintiff is ordered to serve Judge Pollak's R&R and this Order by email on Mr. Barton by October 3, 2023.² Plaintiff shall file proof of such service on the docket by October 6, 2023.

SO ORDERED.

/s/ Eric Komitee
ERIC KOMITEE
United States District Judge

Dated: September 26, 2023
Brooklyn, New York

² Judge Pollak previously authorized Plaintiff to serve Mr. Barton by alternative methods, as attempts to effectuate personal service on Mr. Barton in connection with this case have proven unsuccessful. See Minute Entry dated Dec. 28, 2022 (granting Plaintiff's request, ECF No. 77, for alternative service on Mr. Barton by "email and/or text messaging"); see, e.g., Nos. 105, 123 (ordering service by email).